

crop year plus two subsequent crop years if it is determined by the State or county committee or an official of FSA that such person has:

(1) Adopted any scheme or other device that tends to defeat the purpose of a program operated under this part;

(2) Made any fraudulent representation with respect to such program; or

(3) Misrepresented any fact affecting a program determination.

(d) All amounts paid by CCC to any such producer, applicable to the crop year in which a violation of this part occurs, must be refunded to CCC together with interest and other amounts as determined appropriate to the circumstances by CCC.

(e) All persons with a financial interest in the operation receiving benefits under this part shall be jointly and severally liable for any refund, including related charges, which is determined to be due CCC for any reason under this part.

(f) In the event that any request for assistance or payments under this part was established as result of erroneous information or a miscalculation, the assistance or payment shall be recalculated and any excess refunded with applicable interest.

(g) The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to: 18 U.S.C. 286, 287, 371, 641, 651, 1001 and 1014; 15 U.S.C. 714m; and 31 U. S. C. 3729.

(h) The appeal regulations at parts 11 and 780 of this title apply to decisions made according to this part.

(i) Any payment or portion thereof to any person shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof.

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary hereby waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgement lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

### **Subpart B—Determining Yield Coverage Using Actual Production History**

#### **§ 1437.101 Actual production history.**

Actual production history (APH) is the unit's record of crop yield by crop year for the APH base period. The APH base period consists of ten crop years of actual yield, T-yield, assigned yield, and zero credited yield, immediately preceding the crop year for which an approved yield is calculated in accordance with this part. APH will be used, except as otherwise indicated in this part, as the basis for providing non-insured crop disaster assistance.

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#### **§ 1437.102 Yield determinations.**

(a) An actual yield is the total amount of harvested and appraised production from unit acreage for the crop year on a per-acre, or other basis, as applicable.

(b) A T-yield (county expected yield):

(1) Is the Olympic average (disregarding the high and low yields) of historical yields of the crop in the county for the five consecutive crop years immediately preceding the previous crop year. For example, for the 2005 crop year, the five consecutive crop years immediately preceding the previous crop year would be 1999 through 2003.

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.